**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 205 OF 2002**

**WITH**

**FIRST APPEAL NO. 311 OF 2002**

Kumari Gouri D/o. Laxman
Hedgire & Anr. ..Appellants

versus

Chandrakant T. Jadhav & Ors ..Respondents

Mr. P. M. Mengane for the Appellants.
Mr. J. S. Chandnani for the Respondents.

**CORAM : D. G. DESHPANDE,J.**

**DATE : 2ND MAY,2005**

**ORAL ORDER :**

1. Claimants - Appellants in both the appeals are same so all the respondents. Heard learned counsel for both the parties.

2. The claimants are identical and they lost their parents i.e. father and mother in the same accident. Therefore two claim petitions came to be filed. Appeal No. 311 of 2002 is arising out of the decision in claim petition in respect of father and Appeal No. 205 of 2002 is arising out of the the decision in claim petition in respect of the mother. Both the claim petitions were decided by MACT, Solapur, by common judgment on 20.9.1999.

3. The mother admittedly was not earning anything but for the loss of company and mental shock, the MACT awarded Rs.70,000/- as compensation. Inspite of the arguments of the counsel for the appellants, I am not included to interfere in that order and enhance the compensation.

4. So far as father is concerned, he was 47 years of age at the time of the accident. He was a Junior Engineer drawing salary of Rs.6,900/- per month approximately. The Tribunal however found that he had taken loan for house and motorcycle, for which his salary to the extent of Rs.4884.67 was deducted. Therefore his take home salary was to be taken as Rs.2,000/- out of that dependency was taken at Rs.1,500/- per month because father and mother both died in the accident, as a result Rs.18,000/- per year was taken as dependency factor and multiplier of 13 was applied, the compensation was arrived at Rs.2,34,000/-, Rs.10,000/- was awarded towards loss of love and affection and Rs.1 lac for marriages, as a result Rs.3,44,000/- came to be awarded to the claimants where their claim in respect of father was Rs.9 lacs.

5. Counsel for the appellants contended that the Tribunal committed a grave error in taking

Rs.1,500/- only as a take home salary. He also submitted that even though the deceased father had taken loan of housing and motorcycle and there was deduction of Rs.4884.67 paise. After his death the entire loan amount was recovered by the Government from out of the amenities payable i.e. provident fund and gratuity to the deceased. If that was so then the Tribunal should have taken note of this fact and should have properly fixed the monthly dependency between Rs.3,400/- to Rs.3,000/- per month. He also contended that the deceased was Junior Engineer and 47 years of age at the time. He had either 11 years or 13 years of service left when he died. There were two revisions of pay scales after his death and if he was alive, he would have been entitled to enhanced salary. There were chances of promotion that would have also added to his income and none of these factors were taken into consideration by the Tribunal while fixing the quantum of compensation.

6. As against this, counsel for the insurance company urged that even though the mother was not earning anything, compensation of Rs.70,000/- was paid to the claimants and take home salary of Rs.2,000/- was properly fixed after considering the deductions made towards the loan. He contended that Rs.1 lac was also awarded by the Tribunal for

marriages in addition to an amount of Rs.2,34,000/- and therefore there was no necessity of further enhancement of compensation nor was this is a case where compensation was required to be enhanced.

7. I am not at all in agreement with the submissions made by the counsel for the respondents. Deceased was a Junior Engineer earning Rs.6,900/- per month (to be exact Rs.6879.29) per month and even though he had taken loan for house and motorcycle, the dependency could not have been taken at Rs.1,500/- only so far as children are concerned and if after the death the entire loan has been recovered from the provident fund and gratuity, then the daughters can not be made to suffer on that count. Therefore when the deceased was earning Rs.6,900/- per month and there were four members in the family Rs.1,700/- per head comes as dependency factor. Claimants were two sisters, therefore in any case the dependency was not less than Rs.3,000/- per month. Therefore the amount comes to Rs.3,000/- x 12 x 13 = Rs.4,68,000/-. The Tribunal has awarded Rs.20,000/- for expenses of marriage and loss of state and Rs.10,000/- towards love and affection, it comes to Rs.4,98,000/-. Rs.70,000/- as rightly argued by the counsel for the insurance company have been awarded by the court so far as loss of mother is concerned. But the deceased father Junior

Engineer been alive, he would have been entitled to enhanced salary by reason of revision of pay scale or by promotion. Therefore, considering these facts and in the absence of any specific evidence regarding the revision of pay scale, Rs.5,50,000/-, in my opinion, would be proper compensation. Rs.4,98,000/- is the figure already arrived at and additional amount of Rs.50,000/- or Rs.52,000/- for that matter towards the loss of rise in salary, is required to be granted. Therefore, I pass the following order :

**ORDER**

. Appeal No. 205 of 2002 is dismissed with no order as to costs.

. Appeal No. 311 of 2002 is partly allowed. Compensation awarded in respect of the death of father is fixed at Rs.5,50,000/- inclusive of everything. Rest of the order of the Tribunal to remain as it is. So far as enhanced amount is concerned by this Court in Appeal No. 311 of 2002 from Rs.3,44,000/- to Rs.5,50,000/-, the Insurance company to deposit the amount in this court within eight weeks from today otherwise they will be labile to pay interest at the rate of 9% per annum on that enhanced amount.

. No order as to costs of these appeals.

2.05.2005 (D.G. DESHPANDE, J.)